

EXHIBIT 1

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PLAINTIFF,

-against- Case No. :
22-cv-4563 (AKH)

GEMINI TRUST COMPANY, LLC,

DEFENDANT.

-----X

DATE: February 28, 2024

TIME: 9:32 A.M.

14
15 CONFIDENTIAL VIDEOTAPED REALTIME
16 DEPOSITION of the Defendant, CAMERON
17 WINKLEVOSS, taken by the Plaintiff,
18 pursuant to a Subpoena and to the Federal
19 Rules of Civil Procedure, held at the
20 offices of Commodity Futures Trading
21 Commission (CFTC), 290 Broadway, 6th Floor
22 New York, New York 10007, before Karyn
23 Chiusano, a Notary Public of the State of
24 New York.

1 A P P E A R A N C E S:

2 Commodity Futures Trading Commission
3 Attorneys for the Plaintiff
4 COMMODITY FUTURES TRADING COMMISSION
5 290 Broadway ~ 6th Floor
6 New York, New York 10007
7 BY: ANDREW RODGERS, ESQ.
8 arodgers@cftc.gov

9 BAUGHMAN KROUP BOSSE
10 Attorneys for the Defendant
11 GEMINI TRUST COMPANY
12 1 Liberty Plaza ~ 46th Floor
13 New York, New York 10006
14 BY: JACK BAUGHMAN, ESQ.
15 jbaughman@bkbfirm.com

16 ALSO PRESENT:

17 PAUL BAKER, Videographer
18 ELIZABETH LEE, ESQ.
19 DIANA WANG, ESQ.

20 BRETT TOMER, ESQ.

21 KATIE RASOR, ESQ.

22 DAVID OAKLAND, ESQ., via Zoom

23 ALEJANDRA de URIOSTE, ESQ., via Zoom

24 * * *

1

2 F E D E R A L S T I P U L A T I O N S

3

4 IT IS HEREBY STIPULATED AND AGREED by and
5 between the counsel for the respective
6 parties herein that the sealing, filing and
7 certification of the within deposition be
8 waived; that the original of the deposition
9 may be signed and sworn to by the witness
10 before anyone authorized to administer an
11 oath, with the same effect as if signed
12 before a Judge of the Court; that an
13 unsigned copy of the deposition may be used
14 with the same force and effect as if signed
15 by the witness, 30 days after service of
16 the original & 1 copy of same upon counsel
17 for the witness.

18

19 IT IS FURTHER STIPULATED AND AGREED that
20 all objections except as to form, are
21 reserved to the time of trial.

22

23 * * * *

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2 I wasn't going to talk about
3 those conversations.

4 A. But I think if we look at every
5 single major bank in Manhattan, who has a
6 -- you know, a -- a brokerage in private
7 wealth business, those banks are also going
8 to be lending.

9 So, I -- I think there's --
10 there's nothing abnormal of -- for -- for a
11 company to provide multiple different
12 services, such as trading and -- and
13 lending and borrowing all in the same
14 universe.

15 I think that's just important
16 to note. And --

17 Q. But Gemini was not permitted to
18 do that under its charter with DFS. It
19 could not provide those services that you
20 just outlined.

21 A. I'm just making the simple
22 point that there are plenty of businesses
23 in traditional finance, where the CEO of a
24 -- is -- there's a CEO of a business that
25 engages in lending to its customers that

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2 also trade in the financial markets.

3 There's nothing improper or
4 wrong. And if there were, then that would
5 mean that there would be something
6 problematic with every major bank in -- in
7 Manhattan.

8 In this case, it's obviously
9 different than that. We're talking about
10 an independent entity, which we have
11 established. And Gemini did not make those
12 loans.

13 And so, I think that's worth
14 pointing out.

15 Q. And in your statement that
16 there's nothing improper about being the
17 President of Gemini, while also being a
18 Manager of PearlStreet, are you relying on
19 the advice of Counsel?

20 MR. BAUGHMAN: Hang on a
21 second.

22 Q. It's a yes/no question: Are
23 you relying on the --

24 MR. BAUGHMAN: I don't -- I
25 don't actually know -- it's clever,

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2 but I have to think about it for a
3 second.

4 (Whereupon, a short recess was
5 taken.)

6 MR. BAUGHMAN: Let me read it
7 back.

8 I'm going to instruct you not
9 to answer the question, but I'm going
10 to ask you just to rephrase it; okay?

11 I think you can ask the
12 question: Setting aside any advice
13 you've received from Counsel, what do
14 you believe?

15 But I don't think I can let him
16 answer that question, without
17 revealing attorney-client
18 information.

19 So, I will instruct him not to
20 answer that one, though.

21 MR. RODGERS: Let's see if he
22 we can get through this:

23 Q. Your statement is that there's
24 nothing improper about being the President
25 of Gemini, while also being the Manager of

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2 there's some confusion, let's clean
3 it up, but we are not waiving
4 anything.

5 MR. RODGERS: I understand.

6 And I'm not trying to breach
7 any attorney-client confidences.

8 Q. I just want to understand,
9 whether your position that there's nothing
10 inappropriate about PearlStreet loans and
11 your role, as Manager of PearlStreet and
12 President of Gemini, if -- if that position
13 -- if you're taking that position, based on
14 the advice of Counsel?

15 A. Um --

16 MR. BAUGHMAN: I don't -- I
17 don't -- I'm going to instruct you
18 not to the answer that question.

19 I think that is clearly
20 designed to impinge on the
21 attorney-client privilege.

22 Q. Let's maybe -- let me make sure
23 the record is clear:

24 Are you relying on the advice
25 of -- of Counsel, when you state that

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2 "there's nothing improper about PearlStreet
3 loans"?

4 A. I'm relying on more than just
5 conversations with Counsel.

6 Q. What else are you relying on?

7 A. Well, if -- if that's --
8 position were actually true, and there was
9 something problematic or improper, then it
10 would be absurd. Ev- --every CEO of every
11 major bank would be in violation of
12 something, which clearly isn't the case.

13 And I've read our Supervisory
14 Agreement. I know what is and is not
15 permitted, and there's nothing permitting
16 involvement with other independent entities
17 that I'm aware of.

18 Q. Every CEO on Wall Street has a
19 side business, where they provide loans to
20 customers on an exchange that they operate?

21 MR. BAUGHMAN: Object to the
22 form of the question.

23 A. If you look at Merrill Pro,
24 Bank of America, Merrill Pro. I think it's
25 the largest -- one of the largest prime

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2 to understand that there are numerous
3 examples, where there's a CEO that is the
4 ultimate decisionmaker, or a leader, of a
5 corporate structure that involves both a
6 lending business and a trading business,
7 and there is absolutely nothing wrong, or
8 improper, and -- and if -- if there were, I
9 think financial markets would cease to work
10 or be efficient, which sort of underscores
11 the -- the -- the -- the absurdia of -- of
12 taking a position like that.

13 Q. Who is your lawyer that
14 provided advice regarding PearlStreet
15 loans?

16 A. At the time, it was Ken
17 Raisler, who was, at one point, I believe
18 the General Counsel of the CFTC.

19 Q. And he -- he -- and Ken Raisler
20 has a --

21 MR. RODGERS: Withdrawn.

22 Q. And does the last sentence, in
23 here, says:

24 "Margin is, to me, the most
25 obvious way to get an instant multiplier on

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2 SOUTHERN DISTRICT OF NEW YORK
3 -----X
4 COMMODITY FUTURES TRADING COMMISSION,

5 PLAINTIFF,
6
7 -against- Case No.:
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9 GEMINI TRUST COMPANY, LLC,

10 DEFENDANT.

11 DATE: February 29, 2024

12 TIME: 9:36 A.M.

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16 REALTIME DEPOSITION of the Defendant,
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23 Chiusano, a Notary Public of the State of
24 New York.

25 Job No. CS6346514

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5 290 Broadway ~ 6th Floor
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10 Attorneys for the Defendant
11 GEMINI TRUST COMPANY
12 1 Liberty Plaza ~ 46th Floor
13 New York, New York 10006
14 BY: JACK BAUGHMAN, ESQ.
15 jbaughman@bkbfirm.com

16 ALSO PRESENT:

17 PAUL BAKER, Videographer
18 ELIZABETH LEE, ESQ.
19 DIANA WANG, ESQ.

20 DAVID OAKLAND, ESQ., CFTC, via Zoom
21 ALEJANDRA de URIOSTE, CFTC, via Zoom
22 STEPHEN HITT, ESQ., JFB Legal
23 KATHERINE RASOR, ESQ.
24 BRENT TOMER, ESQ.

25 * * *

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2 F E D E R A L S T I P U L A T I O N S

3

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9 waived; that the original of the deposition
10 may be signed and sworn to by the witness
11 before anyone authorized to administer an
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22 reserved to the time of trial.

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24 * * * *

25

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2 But as I also stated earlier,
3 this was not price manipulation, this was a
4 rebate fraud.

5 Q. You knew that the disclosing
6 manipulative conduct to the CFTC would have
7 raised more questions from the CFTC?

8 MR. BAUGHMAN: Object to the
9 form of the question.

10 A. I have no reason to believe --
11 I -- I don't know what the CFTC would have
12 asked about it.

13 And if the CFTC asked -- we --
14 we answered dozens and dozens of questions
15 and multiple submissions throughout the
16 summer and fall of 2017.

17 There's never -- there was
18 never a question that went unanswered. And
19 all of our answers were complete and
20 accurate.

21 And everything in our behavior
22 demonstrates our willingness to provide
23 information on anything the CFTC requested.

24 And this was probably one of
25 the longest self-certification processes.

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2 And then, we've agreed I'm just
3 going to note the basis for my
4 objection outside the presence of the
5 witness, so there's no assertion of
6 improperly witness -- influencing the
7 witness.

8 And I just want to make two
9 points for context using the
10 questioning, based on sentences in
11 Exhibit 54.

12 The first is: It is a brief --
13 a post-trial brief filed in an
14 arbitration by an entity, Winklevoss
15 Capital Management, that is not a
16 party to this proceeding. So, it's
17 not a statement of a party adversary.

18 The second point is: Counsel
19 has read statements -- sentences from
20 the brief, but those are sentences
21 that are -- have citations to the
22 record in the arbitration.

23 So, these are sentences that
24 are designed to summarize evidence
25 that was presented in the

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2 arbitration.

3 They're not general statements,

4 necessarily, in the sense they are

5 being used here.

6 That's the basis for my

7 objection.

8 We can continue.

9 MR. RODGERS: And is it your

10 position that the statements are not

11 supported by the evidence that's

12 cited in the documents?

13 MR. BAUGHMAN: No.

14 That's not my position, but --

15 MR. RODGERS: And the

16 statements in this document --

17 MR. BAUGHMAN: I'm not going to

18 debate this.

19 MR. RODGERS: -- were accurate

20 at the time that you made them in the

21 arbitration, Mr. -- Mr. Baughman?

22 MR. BAUGHMAN: I'm not -- I'm

23 not here to answer your questions.

24 I've made an objection.

25 We can proceed.

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2 product could not be certified for trading
3 without the CFTC's consent?

4 A. I don't actually know that
5 that's the case. I think that if it fits
6 within the CFTC principles, just because
7 the underlying asset is new does not
8 necessarily mean it requires CFTC approval.

9 I could be -- I could be
10 mistaken, but I do believe that it was a --
11 ultimately filed as a self-certification
12 application after a months long engagement
13 with the commission.

14 But I don't know that there is
15 anything preventing CBOE from filing that
16 application in July.

17 And provided that the
18 commission did not disapprove it, I believe
19 it -- it would be approved. Or it would go
20 forward.

21 Q. Is it fair to say that you knew
22 that Gemini had to be truthful in the
23 information it provided, in connection with
24 the new product certification?

25 MR. BAUGHMAN: Object to the

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2 form.

3 A. Well, we are always truthful.

4 That's how we build our business of -- of
5 trust. And that's -- that's how we
6 operate. And this -- this -- the
7 engagement with CBOE was no different.

8 All that being said, we
9 provided information to CBOE, but we did
10 not have control or agency on what
11 information, necessarily, they chose or how
12 they chose to present that to the CFTC.

13 Ultimately, they are the
14 interface between us and the CFTC. We were
15 not -- it's not our application.

16 Q. So, is it your testimony that
17 the C- -- that CBOE provided information to
18 the CFTC that Gemini did not authorize it
19 to provide?

20 A. That's not my testimony.

21 Q. Do you understand that a
22 product certification requires a detailed
23 description of the cash market?

24 A. What do you mean by "cash
25 market?"

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2 for the potential for manipulation or
3 distortion of cash settlement prices?

4 MR. BAUGHMAN: Object to the
5 form.

6 A. I'm sorry, what is the
7 question?

8 Q. Do you understand that the CFTC
9 gives careful consideration to the
10 potential for manipulation or distortion of
11 the cash settlement price of the futures
12 contract?

13 MR. BAUGHMAN: Object -- object
14 to the form.

15 A. I don't know what their
16 approval process is.

17 All I know is that we got a lot
18 of questions around our auction and the
19 mechanics. And we answered every question
20 that was asked of us. We provided truthful
21 and accurate information.

22 What the CFTC deems to be
23 appropriate or not, I -- I don't -- I don't
24 know if there is -- what those rules are.

25 Q. Would you agree that Gemini

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2 MR. RODGERS: Withdrawn.

3 Q. Did you collaborate with the

4 CBOE --

5 MR. BAUGHMAN: Pardon me.

6 Q. -- in connection with the

7 self-certification of the bitcoin futures

8 contract?

9 MR. BAUGHMAN: Object to the

10 form.

11 A. I don't know what you mean by
12 "collaborate." But as I testified earlier,
13 we provided information, we were helpful,
14 we were responsive, we were truthful, we
15 were accurate.

16 MR. RODGERS: Can I see Tab 88,
17 please?

18 Q. Is it your testimony today that
19 Gemini was an innocent bystander in
20 connection with the self-certification of
21 the bitcoin futures contract?

22 MR. BAUGHMAN: Object to the
23 form.

24 A. That's -- that's not my
25 testimony.

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2 Q. Based on information that
3 Gemini had provided to CBOE in connection
4 with the self-certification; correct?

5 MR. BAUGHMAN: Object to the
6 form.

7 A. Everything we provided was
8 accurate. And we also engaged with them
9 and had an ongoing dialogue.

10 And I have no reason to believe
11 that they provided information that was
12 also not accurate or complete. I have -- I
13 have no reason to believe that.

14 Q. At the July 25th, 2017 meeting,
15 did you tell the CFTC that at times there
16 was no self-trade prevention in either the
17 Gemini auction or on the Gemini exchange?

18 A. I -- it's -- it's possible a
19 question was asked.

20 Again, I don't remember if I
21 even spoke at this meeting. I was present.
22 And this presentation, I believe, was an
23 overview.

24 I don't -- I don't even know if
25 this was responsive to any questions at

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2 reviewed information that Gemini presented
3 to CBOE that was then later presented to
4 CFTC.

5 I have no reason to -- to --
6 and -- and having reviewed them through
7 this deposition, once again, they're all
8 accurate statements.

9 Q. So, he -- he stopped being a
10 serial liar when he was working for Gemini?

11 MR. BAUGHMAN: Object to the
12 form of the question.

13 A. There was no incentive for Mr.
14 Small to lie to the CFTC or the CBOE. And
15 his -- whatever statements that he was a
16 party to or authored have been reviewed by
17 multiple parties, and they're accurate.

18 And we've gone -- I've now gone
19 through them -- though this deposition. I
20 think I did a deposition with the CFTC two
21 years ago.

22 We've made it very clear that
23 they're truthful statements.

24 And we've also gone through an
25 arbitration, I think it was a two-week

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2 A. I believe that he alleged in
3 his complaint that there was something
4 improper or illegal about the PearlStreet
5 loans, and that they "inflated volume on
6 the Gemini exchange," and that they were a
7 secret or not.

8 And that he wasn't aware of
9 them until right before he was suspended,
10 which -- which is just not true. And --
11 and all the evidence shows that he was
12 fully aware of them.

13 Q. Well, who cares if he -- when
14 he knew about it --

15 MR. BAUGHMAN: Please don't
16 interrupt the witness.

17 A. They were -- they were not
18 secret.

19 And we've been never told by
20 anybody, including the CFTC, that there was
21 anything wrong, illegal, or improper with
22 PearlStreet loans.

23 Q. Did you ever ask the CFTC if it
24 was improper for you to be the Manager of
25 PearlStreet while also being the President

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2 evidence -- it's a fact that his complaint,
3 with the false PearlStreet allegations, was
4 -- was submitted or conveyed to the CFTC
5 in -- in/or around November of 2017.

6 So, the CFTC has had since then
7 to ask us, and we had never gotten a
8 question from the CFTC during that process,
9 or for, you know, months afterwards about
10 PearlStreet loans.

11 And we've never been told that
12 they were illegal or improper.

13 Q. Well, the CFTC brought this
14 enforcement action.

15 Does that answer your question?

16 MR. BAUGHMAN: Object to the
17 form of the question.

18 Q. Going back to the exhibit that
19 has the draft declaration, there's a
20 paragraph, in Paragraph 5, that says:

21 "The company and Senior
22 Management always strive to comply with the
23 law."

24 Do you see that?

25 A. Which paragraph?

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2 A. No.

3 Q. Were the PearlStreet loans kept
4 a secret at Gemini during the time you
5 worked there?

6 A. No.

7 Q. Did the CFTC ever ask Gemini
8 about the source of funds or the sources of
9 capital that Gemini customers used to trade
10 on the Gemini exchange?

11 A. No.

12 Q. Did you -- were you ever asked
13 a question by the CFTC that you believe
14 called for information about the
15 PearlStreet loans?

16 A. No.

17 Q. If you had been asked about the
18 PearlStreet loans, would Gemini have
19 provided information by -- to the CFTC?

20 MR. RODGERS: Objection to the
21 form of the question.

22 Calls for speculation.

23 A. Can you repeat the question?

24 Q. Sure.

25 If, in 2017, during the

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2 self-certification process, the CFTC had
3 asked a question, which you understood
4 called for information about PearlStreet,
5 would PearlStreet or Gemini have provided
6 it?

7 MR. RODGERS: Same objection.

8 A. Yes.

9 Yes, is my answer.

10 Q. Now, do you recall being asked
11 yesterday whether there came a point in
12 time when PearlStreet stopped making loans?

13 Do you recall that topic
14 yesterday?

15 A. Yes.

16 Q. And do you recall being shown a
17 couple of spreadsheets that were Exhibit
18 51-A and 51-B that had PearlStreet loans
19 from 2016 to 2017?

20 Do you recall being shown those
21 documents?

22 A. Yes.

23 Q. Okay. I'd like to show you
24 what's been marked for -- as Exhibit 50- --
25 501, please.

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2 followed, was that hidden from the CFTC in
3 any way?

4 A. No.

5 Q. The C- -- if the CFT- -- the
6 the CFTC had asked about the compliance
7 rate for recordkeeping, in connection with
8 the policy, would Gemini have provided such
9 information?

10 A. Yes.

11 Q. To your knowledge, did Gemini
12 ever refuse to answer any questions asked
13 by the CFTC about operational advances?

14 A. No.

15 Q. Okay. Let me ask you to take
16 out Exhibit 94, please.

17 (Witness complies.)

18 Q. Exhibit 94 --

19 MR. BAUGHMAN: I apologize.

20 This is the wrong exhibit.

21 This is not the one I want. I
22 apologize.

23 Exhibit 73. Please take out
24 Exhibit 73.

25 (Witness complies.)

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2 attention an actual instance, ever, when
3 folding occurred?

4 A. No.

5 Q. Are you aware -- well, is it
6 correct that, in the summer of 2017, Gemini
7 provided data about trading in the auction
8 to the CFTC?

9 A. Yes.

10 Q. Is it your understanding that
11 if there were instances of folding in that
12 data, the CFTC could analyze it and
13 identify them?

14 MR. RODGERS: Objection to the
15 form of the question.

16 A. Yes.

17 Q. Has the CFTC ever identified a
18 single instance of folding, to your
19 knowledge?

20 A. No.

21 Q. If, in 2017, the CFTC had asked
22 questions about folding, would Gemini have
23 answered them?

24 MR. RODGERS: Object to the
25 form.

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2 A. Yes.

3 Q. In 2017, did Gemini have any
4 reason to keep --

5 MR. BAUGHMAN: Withdrawn.

6 Q. Now, do you recall being asked
7 questions earlier today about whether or
8 not you knew that certain things were
9 important to the CFTC?

10 Do you recall that?

11 A. Yes.

12 Q. Did anyone from the CFTC ever
13 give Gemini any guidance about what the
14 CFTC considered important?

15 A. No.

16 Q. Did the CFTC, in 2017, ever
17 give Gemini any guidance about what the
18 CFTC considered material?

19 A. No.

20 Q. In 2017, did the CFTC ever give
21 Gemini any information about what
22 information the CFTC considered in making
23 decisions?

24 A. I'm sorry, can you repeat the
25 question?

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2 Q. Yeah.

3 In 2017, did the CFTC ever
4 disclose to Gemini the information the CFTC
5 considered in making decisions in
6 connection with the self-certification
7 process?

8 A. No.

9 Q. Did anyone from the CFTC ever
10 indicate to Gemini, in any way, in 2017,
11 that it was Gemini's responsibility to
12 figure out what the CFTC thought was
13 important?

14 A. No.

15 Q. In 2017, did anyone from the
16 CFTC ever indicate to Gemini, in any way,
17 that Gemini had a responsibility to figure
18 out what the CFTC thought was material?

19 A. No.

20 Q. If the CFTC had told Gemini, in
21 2017, what the CFTC thought was important,
22 would Gemini have tried to provide that
23 information?

24 A. Yes.

25 Q. Now, you were asked some

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2 investigation. And as part of that, I gave
3 evidence via confidential written
4 submissions, over the phone and at
5 in-person meetings beginning on 1,
6 November, 2017?"

7 A. Yes.

8 Q. Are you aware that counsel for
9 the CFTC has not denied the truth of Mr.
10 Small's statement?

11 A. Um --

12 Q. That there was communications,
13 beginning on November 1, 2017, are you
14 aware that the CFTC has not denied that?

15 MR. RODGERS: Objection.

16 A. I don't believe that they have.
17 If they had, I -- I probably
18 would have heard of it.

19 Q. Okay. After November 1, 2017,
20 did the CFTC ask any questions about the
21 PearlStreet loans?

22 A. After --

23 MR. BAUGHMAN: Withdrawn.
24 Withdrawn.

25 Q. Between November 1, 2017 and

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2 December 1, 2017, did the CFTC ask any
3 questions about the PearlStreet loans?

4 A. No.

5 Q. If they had, would Gemini had
6 answered them?

7 A. Yes.

8 Q. Based on the topics that you
9 know were raised in Mr. Small's
10 whistleblowing complaint, did the CFTC ask
11 you any questions that you believe were
12 based on information provided in that
13 whistleblower claim between November 1,
14 2017 and December 1, 2017?

15 A. I'm sorry, can you repeat the
16 question?

17 Q. Sure.

18 Are you aware of any questions
19 the CFTC asked Gemini between November 1,
20 2017 and December 1, 2017 that relate to
21 topics raised in Mr. Small's so-called
22 "whistleblower sub- -- submission"?

23 A. No.

24 Q. Are you aware that if Mr. Small
25 were to testify in this case, he would have